

NOMINATION OF JOSEPH G. SCHIFF

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HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE NOMINATION OF

JOSEPH G. SCHIFF, OF KENTUCKY, TO BE ASSISTANT SECRETARY OF
PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

JUNE 7, 1990

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NOMINATION OF JOSEPH G. SCHIFF, OF KENTUCKY, TO BE ASSISTANT SECRETARY OF PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

THURSDAY, JUNE 7, 1990

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:07 a.m., in room SD-538, of the Dirksen Senate Office Building, Senator Riegle (chairman of the committee) presiding.

Present: Senators Riegle, Dixon, Shelby, and D'Amato.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The committee will come to order.

Let me welcome our nominee this morning and our colleague, Senator McConnell, and family members of our nominee.

I want to make a couple of initial comments and some introductory remarks with respect to this nominee, and then I will call on my colleague, Senator McConnell, for introductory comments that he wants to make.

Let me say first on a nonrelated matter that the news has reached us this morning that Manuel Johnson has announced that he will be resigning as the Vice President of the Federal Reserve Board.

I want to just say that I think he has worked diligently in that position, been a very conscientious member of the Federal Reserve Board in his work while with this committee.

So, I don't know what the circumstances are that bring about his decision to return to the private sector, or what other activities, but he certainly goes to whatever his new activities will be with the good wishes of this chairman, and the members of this committee. And I'm sure in due course we will have an appointment recommendation from the administration with respect to who may be filling that pending vacancy.

This morning, the committee is here to consider the nomination of Mr. Joseph Schiff to become Assistant Secretary for Public and Indian Housing at the Department of Housing and Urban Development.

The Assistant Secretary for Public and Indian Housing is responsible for administering and implementing programs which affect some of the Nation's poorest people.

Public Housing serves only those persons who have incomes under 50 percent of the area median.

Since 1937, public housing has produced over 1.4 million units of successful low-income housing. Today, the waiting list for public housing authorities are approaching 1 million, even though many public housing authorities have stopped taking applications. So, presumably, there are even more people who need this assistance.

Indian Housing serves very low income Native Americans who live in impoverished conditions on reservations across the country. Approximately one-quarter of all Indians and Alaskan Natives on reservations live in units that are overcrowded, dilapidated or sub-standard.

In fiscal year 1990, funds for 1,742 units of new Indian housing were approved; however, it is estimated that this only represents 2 percent of the actual need for new housing.

So, given the dire shortage of public and Indian housing units and an acute need for modernization of existing units, the new Secretary for Public and Indian Housing will face a number of difficult and pressing issues over the next few years.

President Bush has nominated Mr. Joseph G. Schiff to serve as Assistant Secretary for Public and Indian Housing. Mr. Schiff has had a distinguished career in housing and real estate. As a long-time resident of Louisville, KY, he has worked as a realtor in the community there for some 14 years.

In the public sector, he served as deputy county judge and executive for the Jefferson County government from the years 1978-84.

In addition, Mr. Schiff served as manager of HUD's Louisville area office from 1985 until 1989, and as manager of the Louisville office, he received several awards as an outstanding manager.

Currently, he is serving as a special advisor to the Department of Public and Indian Housing.

And I want to just also note, and we'll insert into the record a letter that I have received today from Mr. James Johnson, executive director of the Public Housing Authority's Directors Association, based here in Washington, in which they enthusiastically support the confirmation of Mr. Schiff.

And I won't read the letter now, but it is a very positive and supportive statement by that organization in behalf of this nominee. And so we'll make that a part of the record.

Let me just inquire of my colleagues before going to Senator McConnell.

Senator D'Amato, do you have an opening comment that you wish to make?

Senator D'AMATO. Yes, I do, Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. I'll try to make it brief.

I'm pleased to be here today for the nomination of Joseph Schiff to be Assistant Secretary for Public and Indian Housing. And as you've indicated, Mr. Chairman, he brings a distinguished career in the housing and real estate field. And I am very hopeful that some-

one with his background can make a very real change. It is desperately needed.

Public housing is facing serious times. Families are threatened by rampant drug dealing and criminal activity, and the traditional family life—promoting good education and employment—is becoming increasingly difficult.

And it's no wonder that public housing has become more of a trap than it has been a step up and out of poverty. Public housing's played an important role years back in giving so many families an opportunity to catch that step, and then to move up.

And I would hope that Mr. Schiff can bring the kind of management expertise, the innovation that can really make a difference.

The Assistant Secretary for Public and Indian Housing will be a key player in turning around this trend. And we need some new ideas for public housing. And I support tenant empowerment concepts but, nonetheless, we have to understand that for those who rent, we must find more creative ways of integrating public housing into the community.

Because of these concerns, I'm pleased that Joe Schiff has been nominated to be Assistant Secretary. Again, he brings with him a great deal of experience in this area and I certainly look forward to working with him in bringing about the kind of innovative leadership—not just the caretaker—but the innovative leadership that this area so desperately needs.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator D'Amato.

Senator Dixon.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Thank you, Mr. Chairman.

Before us this morning is the nomination of Joseph Schiff to be Assistant Secretary for Public and Indian Housing. This is a very sensitive and important position at the Department of Housing and Urban Development; one which affects the lives of many families throughout the country.

I'm aware of the allegations surrounding the Hatch Act violations involving Mr. Schiff, and the opinions rendered by the Office of Special Counsel of the Merit System Protection Board, and the Department of Justice.

Additionally, I'm thoroughly familiar with Mr. Schiff's outstanding background, which otherwise seems to be unquestionably suited for this important position.

However, Mr. Chairman, the alleged Hatch Act violations trouble me. As recently as last year, Congress approved a comprehensive package of reforms designed to restore ethical integrity to HUD and its programs. I hesitate to take any risks which could possibly jeopardize those actions.

I look forward, Mr. Chairman, to this hearing and I truly hope that Mr. Schiff can fully vindicate himself.

The CHAIRMAN. Thank you, Senator Dixon.

Senator Shelby.

Senator SHELBY. Mr. Chairman, I have no opening statement.

And, other than that, I'd wait on—the nominee's here.

The CHAIRMAN. Before we begin I have a statement from Senator Cranston.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Mr. Chairman, I am pleased that this hearing is finally being held. The position of Assistant Secretary for Public and Indian Housing—one of the most difficult and significant positions at the Department of Housing and Urban Development—has been vacant for almost a year and a half.

Mr. Schiff, if confirmed, you will inherit one of the toughest jobs in the Federal Government. The families who live in the 1.3 million public housing units are generally very poor. The average public housing resident now has an income of less than \$6,000. More than 75 percent of the households are headed by a single adult. More than half receive public assistance. Many of these families and individuals have multiple social, health and educational problems.

The inventory itself is old and deteriorating. A large part of the blame lies on the Federal Government which has failed to provide adequate resources to do the routine maintenance and fix up that are bedrock of good management. Yet it is clear that some public housing projects were ill designed from the start. Many low-rise developments, for example, were built without attention given to notions of defensible space. High-rise developments often contained elevator banks open to the elements. In both cases, developments are densely populated. These developments generally require major redesign to correct not only for years of deferred maintenance and the physical deterioration or obsolescence of major systems but for serious flaws in the original design. A Commission on Severely Distressed Public Housing will soon be examining ways in which this part of the inventory can be reconstructed and revitalized.

Other issues—troubled public housing authorities, public housing replacement, the testing and abatement of lead-based paint, tenant management, tenant ownership, drug-related eviction policies—also dominate the public housing agenda and will make it one of the “hot spots” at the Department in the next coming years.

I am aware that questions have been raised concerning the possibility that your past political activities as a local government official involved violations of the Hatch Act.

Although, I understand that there is some disagreement from the Justice Department, the Office of Special Counsel (OSC's) of the Merit System Protection Board has issued an opinion that your activities did constitute a violation. This is, of course, an important matter that the committee will have to weigh heavily along with the evidence that you bring outstanding qualifications to the job.

Because of a hearing now being held by the Veterans Committee, of which I am Chairman, I will not be able to attend this morning's hearing. I may, however, have questions for the record.

The CHAIRMAN. Let us now welcome our colleague, Senator McConnell. I don't know that we've had the pleasure of having you appear before us before this committee, Senator McConnell, but we're pleased to have you today. And we know you're well-acquainted with Mr. Schiff, and we'd like your comments at this time.

STATEMENT OF SENATOR McCONNELL

Senator McCONNELL. I thank you, Mr. Chairman, for the opportunity to be here to introduce Joe Schiff, an experienced and distinguished nominee for Assistant Secretary of Public and Indian Housing.

I'd also like to introduce Joe's wife, Polly, who is an educator. Polly, would you stand.

And their two sons, David and Blair, and Joe's mother, Elaine, who is also a successful business professional woman in her own right, Joe's family, right here behind me.

This nominee has been a long-time close, personal friend, colleague, and associate of mine. He's highly qualified to serve in the position to which he aspires.

Joe has been a life-long resident of Louisville, earned a BA degree in government from the American University here in Washington, and has a JD from the University of Louisville School of Law.

He's a member of the Kentucky Bar Association, a former member of numerous professional real estate organizations.

Joe has an extensive experience in public service, professional business organizations and as a managing partner in a family owned business in the private sector.

Mr. Chairman, at the age of 21, Joe was legislative assistant to then Congressman William O. Cowger from Louisville. At that time, Joe was the youngest legislative assistant in Congress. His Capitol Hill career was interrupted by service in the U.S. Army and he was stationed at Fort Lewis, WA and at the Pentagon.

Returning to Louisville, he became active in civic and business affairs and became the managing partner in the family business, as well as becoming an instructor of real estate at Jefferson Community College.

He was also honored as both the Louisville and Kentucky Realtor of the Year in 1982. He has served in numerous positions in the Kentucky Association of Realtors, including president, and was also a director of the National Association of Realtors.

During my tenure as county executive, Joe served as my Deputy and most trusted advisor. He also brought his considerable management and budgetary skills to bear in assisting me in restructuring the administration of county government.

Subsequently, he was appointed area manager of the Kentucky HUD office and received HUD's highest performance rating—every year.

In serving the housing needs of Kentucky in an innovative fashion, the nominee became the first recipient of the Manager of the Year Award for the HUD southeastern region. In 1988, under Joe's leadership, the Louisville office was the only HUD area office to receive two HUD awards, for Superior Accomplishments in Public Housing.

Because of its professionalism, integrity, and knowledge of the nation's housing needs, he was brought to Washington to serve Secretary Jack Kemp as a special advisor for Public and Indian Housing matters.

In summary, Mr. Chairman, Joe Schiff has served his profession, his community, his State and his country with a high degree of distinction, integrity, compassion, and fairness.

In addition, Mr. Chairman, I also have a copy of a letter by the mayor of Louisville, one of the most prominent members of the other party in our State, which I would like to just read. It's a brief and enthusiastic letter of support, and I ask that it be made a part of the record.

The mayor of Louisville said:

I'm writing to express my wholehearted support for the nomination of Joseph Schiff as Assistant Secretary of Public and Indian Housing for the Department of Housing and Urban Development.

The mayor said:

Joe is an accomplished and dedicated public servant whose been an outstanding leader in the field of housing and community development in Louisville.

As HUD's director in Louisville, the mayor says:

Joe was instrumental in supporting innovative housing programs for Louisville and Jefferson County that have now become national models for housing authorities across the country. He will make an intelligent and sensitive contribution to solving this Nation's housing problem, and I urge the Senate to confirm him as soon as possible.

That's Jerry E. Abramson, who is the mayor of the city of Louisville.

Mr. Chairman, I thank you very much for the opportunity to be here on behalf of this outstanding nominee, and I wish you and him well.

Senator DIXON. Mr. Chairman.

The CHAIRMAN. Very good. Thank you, Senator McConnell.

Senator Dixon.

Senator DIXON. I apologize very much for intruding, and I know we're going to hear from Mr. Schiff.

Frankly, I've just heard my colleague from Alabama's beeper and I think we are voting on cloture on the crime bill at 10:30.

I must advise the Chair that thereafter we go to the CFTC reauthorization, where an amendment to that bill, as you know, is very important to this Senator. I'm going to be otherwise tied up most of the morning.

I, frankly, am impressed by Mr. Schiff's qualifications. I would like very much to just hear him simply tell about that Hatch Act violation. I think it had to do with soliciting campaign contributions. I suspect that the answer is an adequate one. However, if we could clarify the record on that, I wouldn't have any problems at all with this nominee.

The CHAIRMAN. Very good. I think, in light of that request, let me swear the witness and we'll move right into that, in light of that fore-schedule that's immediately in front of us.

Mr. Schiff, let me ask you to stand now and raise your right hand.

Do you swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you, God?

Mr. SCHIFF. I do.

The CHAIRMAN. Do you agree to appear and testify before any duly constituted committee of the Senate?

Mr. SCHIFF. I do.

The CHAIRMAN. Very good.

I know you probably have some opening comments to make, and let me invite you to do that. And then I'd like you, if you would, to respond directly to the issue that Senator Dixon has raised.

JOSEPH G. SCHIFF, NOMINEE, TO BE ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. SCHIFF. Senator, if you don't mind, I would like to submit a statement for the record and move straight into Senator Dixon's question in the interest of time, before this committee.

The CHAIRMAN. Let me——

Mr. SCHIFF. I have a written statement. I'd like to introduce it for the record.

The CHAIRMAN. By all means, we'll make it a part of the record.

Mr. SCHIFF. And forego reading it, and move straight into Mr. Dixon's question, if I can, please.

Senator DIXON. Yes, if you would, Mr. Schiff, because I think everybody here knows you're highly qualified. We've all looked at your background. You clearly are competent to handle this job, but I'd just like to know about those charges.

Mr. SCHIFF. Fine. Thank you, Senator.

If you don't mind, let me go back a little bit in history, as far as my personal political involvement has been concerned.

When I was a student and, to be honest with you, I can't remember if it was my senior year of high school or freshman year of college, I desired to receive a summer job working in the parks department in my local community.

In order to receive that job, what I had to do was fill out a job application. And I needed references for that job. In fact, I needed two specific references. I needed a precinct captain's recommendation, and I needed a ward chairman's recommendation as a reference for that job, which may not be dissimilar in the sixties from a lot of other communities around this country.

Senator DIXON. Some of us thought that was all right, but certainly not Chicago or——

Mr. SCHIFF. Never in Illinois. I realize that, Senator.

That was the political environment at the time. At the time, local government employees were expected to contribute 2 percent of their salary to the party in power. And that was collected on a regular basis.

In 1969, the local government changed both parties and leaders, and the system changed. The system went from a 2-percent contribution to the party to a 2-percent contribution to the reelection committee of the incumbent county executive. And that continued through the term of that particular executive.

In 1977, my friend, Senator McConnell, ran for county executive with the pledge of ending the mandatory 2-percent contribution. And that is exactly what we did, Senator. We ended the mandatory 2-percent contribution.

What we did is some of the political appointees, and members of his staff, were asked if they would care to contribute on a totally

voluntary basis to his reelection effort. In some of the press reports, for example, that have appeared in the *Courier Journal* last fall about this particular matter, two of the former employees were quoted in the media as saying they did not feel pressured to contribute.

In fact, one said that she stopped contributing and had absolutely no adverse reaction. There was no coercion from my definition of the word "coercion."

This came up in my FBI background check. And it was referred to the Office of Special Counsel of the Merit System Protection Board. They checked into the matter.

Under their interpretation of what's called the State and local government Hatch Act, any State or local official who has any relationship with a Federal program is covered and barred from the solicitation of funds.

That's certainly not the case under Kentucky law, but that was their interpretation of the Federal statute.

Were that to be the case, there were literally tens of thousands of people working in the State and local government around the country that would be covered that I do not believe today think they are covered by that statute. I certainly had no idea the statute existed.

I realized if I had been, for example, a community development director, a housing authority executive director, someone directly paid with Federal funds, yes, the Hatch Act would have applied. But, I was paid while working for local government strictly with local government general revenue.

The opinion, when it came in, was shared with the White House. They then referred it to the Office of Legal Counsel, the Department of Justice, which is, I understand, is the official lawyer for the Federal Government.

They checked into it and went back to the Civil Service Commission, which was the predecessor of the Merit System Protection Board. There were two lines of cases, one that MSPB had chosen to follow, and the other line of cases which said that one must be principally involved with Federal activities to be covered.

And there was debate within the Congress that was cited by the Office of the Legal Counsel that led them to the conclusion that one must be principally involved with Federal activities.

So, therefore, the official government position is that the MSPB erred in applying the State and local Hatch Act in my case, and that I was not covered by the act.

Obviously, when I was sworn in as a HUD employee in 1985, I resigned all of my political affiliations. I resigned my affiliation with our local Republican Executive Committee, and so forth and so on, and have done no political business since then, because, clearly, I have been covered by the Hatch Act. I respect that and have abided by the Hatch Act.

In a nutshell, Senator, that's the story.

Senator DIXON. If I may, Mr. Chairman?

The CHAIRMAN. Senator Dixon.

Senator DIXON. All of us have our own experiences back home. Now, for instance, in my own county St. Clair, a pretty good large county in southern Illinois, they actually have a person there who

is in charge of a department that handles all kinds of different Federal funds.

Mr. SCHIFF. Right.

Senator DIXON. That go back to the county.

I presume he probably is "Hatch" then, is he?

Mr. SCHIFF. If his salary is paid from Federal moneys, my understanding is he would be Hatched. The same would be true with the local housing authority.

Senator DIXON. So that oversimplification of what you're telling us is you collected some campaign funds which is an ordinary perfectly appropriate course of conduct for a person in a political position. You did it on a basis where the gifts were voluntary contributions, not anything that was a mandatory check-off system, or anything of that kind.

Mr. SCHIFF. Correct.

Senator DIXON. And it's now ruled that you were not under the Hatch Act but even if you would have technically been, it's not your knowledge that you were.

Mr. SCHIFF. Correct.

Senator DIXON. And I take it, it has been passed upon that you were not, in fact.

Mr. SCHIFF. Correct. And, obviously, if I had the knowledge that MSPB has imparted on me, I would never have done it in the first place. But I had absolutely no knowledge of that.

Senator DIXON. I don't have any further problems with that feature of the report, Mr. Chairman. Others may.

The CHAIRMAN. I think, as a matter of making sure that the record is complete, we will insert in the record at this time both legal opinions—the opinion issued by the Merit System Protection Board, which has one view on the matter, and that's dated March 2, 1990; and then the subsequent May 4, 1990 memorandum or opinion issued by the Office of Legal Counsel of the Department of Justice, both of which have been referenced here.

And I think it's important to establish as well that your intention with respect to this job, obviously, you've been greatly sensitized to this issue because—

Mr. SCHIFF. Very much so, Senator.

The CHAIRMAN [continuing]. You've really been over the jumps on this one. And so I take it that you're saying to the committee that it's your intention to make sure that there is absolutely no partisan or political contact or relationship or solicitation or activity of that kind associated with the work that you would be doing in this position.

Mr. SCHIFF. Absolutely none. The Secretary is very clear in setting high ethical standards for the Department, and I intend to fully abide by those standards.

The CHAIRMAN. I must say, in talking with Secretary Kemp, he has spoken very highly of you. He obviously has great confidence in your ability to do this job.

And I want my colleagues to know that the Secretary has expressed that view to me.

Let us now proceed with some other matters that I think we need to discuss in the course of this hearing this morning.

In HUD's 1991 budget proposal, the agency proposed to eliminate all funding for new units of Indian Reservations. However, a 1988 Bureau of Indian Affairs survey determined that nearly 93,000 new or substantially rehabilitated homes were needed just to meet the very urgent human needs out in the Indian community.

Furthermore, approximately one-quarter of the Nation's 1.7 million Indians and Alaskan Natives are on reservations where they live in housing units that are overcrowded or run-down or generally thought to be and considered to be substandard.

Now, given the obvious need on the one hand for additional Indian housing in a very extreme way, what is your own view on the administration's position to completely eliminate funding for any new units at all?

Mr. SCHIFF. Senator, the administration proposal for fiscal year 1991 is based on the premise that we need to (a) reduce the pipeline that exists; and (b) fund through certificates and vouchers.

Personally, I have had an opportunity to gain a greater understanding of the Indian Program since coming here. Coming from Kentucky, I have had no exposure.

The CHAIRMAN. Right.

Mr. SCHIFF. For example, in your home State, Mr. Nolan happens to be chairman of the National Association of Indian Housing Council, which is a tremendous organization, they have had an opportunity to educate me.

I've had an opportunity on behalf of the Secretary to travel to Indian country to see the problems of Native Americans. I have a great deal of empathy for those citizens.

It is my personal opinion that we do need to attack that problem. As you know, Congress has just funded through the emergency supplemental a Commission on Indian Housing, and Congress has ordered that they report within a year after establishment innovative ways to help develop the Indian Housing and we intend to cooperate fully with them.

Personally, and I speak now solely as an individual, for the fiscal year 1992 budget process which we are engaged in right now as far as trying to prepare a recommendation to the President, I will be supporting additional units of housing for Indians. Whether it will come out in the administration budget obviously is a decision for the President.

But I have seen the problem. I acknowledge the problem. It's a tremendous problem. And we need to address it.

The CHAIRMAN. Well, I appreciate the answer. And let me make a suggestion to you. I was just recently in northern Michigan in the Upper Peninsula, at the Bay Mills Reservation area. And I don't cite that as one that would be as distressed by any means as some of the others around the country, in the Midwest or elsewhere.

But, it's really a terrible problem. And it's a wrenching reality. And it's basically out of sight of most Americans. And, oftentimes, as we know, out of sight means out of mind. You don't see it and, therefore, you're not aware of it, don't think about it.

I would hope that, in your travels, as you develop this new insight and sensitivity—as you say, coming from Kentucky, getting into the Indian housing area is sort of a new line of work for you—

I think it's very important that you take some photographs, get some visual evidence of what exists out there and the difficulties that so many Native Americans are struggling with. And make sure that as you deal with OMB and the others in the policy positions, that you make this real.

I mean, you're going to have a hard time getting them to go around the country, to go into some of these reservation areas. But, you certainly can bring back compelling photographs that you have seen or even have taken yourself with a camera and depict this in a way that makes it real for people; because something has to be done about it.

I think it's tough enough to deal with some of the discrimination, direct and latent in our society, that's directed at minority persons and Native Americans. But, to start out and to come and have to try to function in very substandard living conditions obviously makes all these other difficulties even that much worse and harder to overcome.

So, I think we need to have a bright light shown on the circumstances so that the American people can understand what the problem is. And my own view is that, while we've got a lot of problems to face up to in the country and to deal with and many of them are very complicated and difficult and even expensive to deal with, I think, when the American people have some sense as to what is happening with a lot of the substandard housing on Indian Reservations, that they're going to want to do something about it.

I think the human impulse will be to say:

Look, that's just not a condition that we ought to have in America, and it's something we ought to remedy and let's set out to do it. And let's work together to get it done.

So I think we can marshal some good strong public support and I think and hope that you will be able to within the administration, but you're going to have to make it real. And the suggestion that I give you is obviously a very simple and basic one, but I think it ought to help drive home what you, yourself, have seen.

Your sensitivity has risen. Your awareness. You now see a compelling problem out there that, 2 or 3 years ago, you would not have been aware of.

Mr. SCHIFF. Senator, I'm happy to inform you that last fall, a couple of staff members from the budget side of OMB did travel to Indian country with some of the Office of Indian Housing personnel to see firsthand the plight of Native Americans.

In conversations that I've had on behalf of the Secretary this spring, I see a great deal more sympathy for the Indian Housing Program within OMB.

The CHAIRMAN. I want to ask a related question and then we'll have to recess briefly while we go over to vote. And then I'll get back and we'll continue.

There is a 1989 report by the Special Committee on Investigations of the Select Committee on Indian Affairs which criticized HUD's administration of Indian housing projects. And in that report, it described them, quote:

"As case studies in bureaucratic confusion in unaccountable government." End of quote.

The Special Committee's report found that fraud and abuse on preference selections, approval of faulty architectural plans, poor site selections and inadequate on site inspections contributed to lengthy delays on the projects.

The report stated, and I continue quoting it:

"Often, the length of time required to complete a project has less to do with its size than with the extent of bureaucratic mishap."

Now, we know that HUD during the 1980's was very substantially cut back. Our housing programs were reduced more sharply than any other part of the Federal Government's activities.

And so programs that would be down to the end of the line anyway in terms of emphasis on priority, like Native American housing, would obviously, I think, be getting the least attention, the least level of commitment of professional attention. That would be a supposition, but the report that's been done would bear that out, that that's what happened.

We also know that some of the most ingenuous minds in the Department of HUD were doing other things. They were working on how to skim off the Mod Rehab Program, various other things. So, we know where the attention was given. We also now have a sense as to where it didn't go that it ought to have gone, and that is to try to deal more directly and efficiently with these problems.

And my question to you, as the Assistant Secretary for Public and Indian Housing, what would you plan to do to address HUD's problems in administering its Indian housing programs?

Mr. SCHIFF. First of all, the program deserves the attention of the Assistant Secretary. And, if confirmed, I will give it appropriate attention.

The Office of Indian Housing is one of four major subdivisions currently under the jurisdiction of the Assistant Secretary for Public and Indian Housing.

I think all too often in the past it may have been treated as a stepchild. That will end. The Indian Housing Authorities, I believe, have already seen my presence more than my predecessors, or at least so they have told me. And, if confirmed, I would intend to continue that practice.

I think it is absolutely critical that they be an integral part of the program, not an afterthought, as has been too often the case.

One of the things that Secretary Kemp is going to be able to accomplish, hopefully, next week, is the publication of the Consolidated Indian Regulation, which is a project long overdue, the consolidation of all regulations dealing with the Indian Housing Program.

And the target publication date for that regulation is June 15. So, hopefully, that's just right around the corner. That will give us a fresh start.

Also, as you will see in the statement which I've submitted for the record, one of the things that I am most concerned about and one of my major objectives, if confirmed, is to enhance accountability. And that's in both the public housing arena and the Indian housing arena that I will be striving for that objective.

The CHAIRMAN. Let me say to you that, at some point before long, I would like to invite you to come to Michigan with me. We would go together and perhaps take a look at a couple of situations—maybe one in the Indian housing area and one in public

housing generally in terms of the scale of the problem that we're up against, because I'm very much interested in seeing the expertise that you bring with a bona fide professional background in this area to what is obviously a very, very difficult problem.

And the fact that you're willing to commit your professional energies and attention to try to do something about it is to me very important. And I appreciate that professional commitment on your part and the fact that your family obviously supports and is with you here today.

So, at some convenient point, I would like us to have the chance to try to do some work together in my home State. Obviously, there are a number of other places.

But, we have some serious matters in both areas that I'd like to have you take a look at and have us think about what we might do to improve.

Mr. SCHIFF. I'd appreciate that opportunity, Senator.

The CHAIRMAN. And so can we look forward to doing that? Having an opportunity to do that?

Mr. SCHIFF. Absolutely. At your convenience.

The CHAIRMAN. All right. Let me now just recess the committee and I'll be back as soon as I cast this vote.

The committee stands in recess.

[Recess.]

THE CHAIRMAN. The committee will resume.

Let me invite those in the room to find seats and we'll continue with the questioning.

Mr. Schiff, in the area of modernization for public housing, there have been some recent studies conducted by Apt Associates which have indicated that the need for public housing modernization, according to their estimates, range from \$18-\$20 billion or more. The figure could well be higher.

So you have that professional estimate on the one hand of what the base level of need is today for people out there who are not housed at all. Many are homeless or very poorly housed.

And on the other hand, we have at the present time about \$1.8 billion. We've got just short of \$2 billion to match against a \$20 billion problem, in terms of the money that's actually been dedicated to modernization.

And, yet, the administration has proposed cutting the Comprehensive Improvement Assistance Program, CIAP, which is designed to aid these modernization efforts. They propose cutting it back by approximately \$200 million.

So, we're starting out with a very small amount anyway when you measure it against the problem. And they're talking about a cut here of a major size, \$200 million being a very substantial cut in that figure.

And so I'm wondering, given what we know to be an acute need for modernization of public housing units that are out there, what is your view of the funding proposal to actually cut the amount of this funding?

Mr. SCHIFF. Senator, I don't believe we're really proposing to cut the total amount going to CIAP. What we're proposing to reduce is the Federal percentage of that. Right now, CIAP is totally funded by the Federal taxpayer.

The proposal the administration has put forward of \$1.85 billion includes a \$150 million match from State and local governments, which would total the \$2 billion that you got for fiscal year 1990.

The problem is acute, as you have stated. It is one that we are trying to address. We have a proposal that we're trying to implement right now that came from the 1987 housing bill, which is called the Comprehensive Grant Proposal, which will give housing authorities greater flexibility to utilize the funds that we do fund them with.

We believe that this particular proposal, the freedom to spend money on a priority basis set by the housing authority and merely approved by the Department, will enable the dollars to stretch further.

So (a) while the Federal contribution is reduced by \$150 million, the overall pot remains the same; and (b) we're trying to give particularly the larger housing authorities greater flexibility in how they use the funds.

The CHAIRMAN. Well, it stays the same if the States can come up with the share that you now are asking them to produce; is that right?

Mr. SCHIFF. Correct. Correct.

The CHAIRMAN. I mean, how do we know that they will?

Mr. SCHIFF. We don't. But, we have faith that they can.

The CHAIRMAN. But, you know, if you follow that theory very far, you could say, well, let's just have the States do all of this. You know, we could save the whole \$1.8 billion if we just ask the States to provide that money.

I mean, I'm not sure that's a real answer. I mean, it may be a desirable way to get into the cost-sharing, but it looks to me as if a lot of the States right now around the country are having severe financial problems of their own.

And so I'm wondering if just pushing that load off on them that we have seen in the past to be a Federal responsibility, the fact that there are poor people scattered across the country is not necessarily the responsibility of a given State. It's a national condition.

So, what's the reasoning behind pushing part of this on to the State? And if you're going to do it, why not ask them to take it all?

Mr. SCHIFF. Well, I don't think it would be practical or desirable to ask them to take it all. As far as getting them involved, I think that it is highly desirable that we have more intergovernmental cooperation, frankly, for both the physical facilities that exist in public housing and on behalf of the residents of public housing.

Again, the statement which I submitted for the record talks about that as one of the major objectives that I have, if confirmed, while I serve as Assistant Secretary for Public and Indian Housing. It is absolutely critical that communities recognize that residents of public housing are members of the total community and not just a Federal problem to be isolated in projects.

And this is one way to encourage State and local governments to participate more on behalf of the 3 million residents of public and Indian housing.

The CHAIRMAN. Do you have an indication that all 50 States can come up and will come up with their matching money?

Mr. SCHIFF. The way the program is designed, it's not a requirement of any State or local government to match, it is a question of whether they would desire to do so, and whether they have the financial capability of doing so.

I can't sit here and tell you that all 50 States have a desire to——

The CHAIRMAN. What if they can't or won't? Then, what happens?

Mr. SCHIFF. Then the other—what is it? 92.5 percent of money, which is the straight Federal money, would go in those areas.

In other words, the only part of the pot that is changed by this is the \$150 million matching portion of the Federal dollars.

The remainder, \$1.7 billion, is allocated as it has traditionally been allocated, without any requirement for a match.

The CHAIRMAN. So that State would still get a portion of the money they got in the previous year. They would just get less? Is that right? Is that what you're envisioning?

Mr. SCHIFF. Yes, sir, they would.

The CHAIRMAN. And so they would get that amount and there's no condition attached to that in terms of them coming up with their new share of the money?

Mr. SCHIFF. Not to the \$1.7 billion. That's correct, Senator.

The CHAIRMAN. So what you're saying to the States is that:

Look, we'd like you to pitch in and finance part of this and in order to give you a real incentive, we're going to cut back on the amount that we've been doing. And we're inviting you to put in the remainder. And if you don't, then your program is going to be reduced by that amount. And that's the best we can do?

Isn't that the essence of it?

Mr. SCHIFF. The essence of it is that we're saying:

In these times of tight Federal budgets, we're inviting you to help us help the residents of the public and Indian housing communities in your State or your jurisdiction.

The CHAIRMAN. You see, that question, which is not just a question that gets focused here, it's all across the broad base of the Federal Government in all of our activities, in our State of Michigan right now, we've got tremendous pressure on property taxes. And there's only so much revenue I think that given States can generate.

And they do it in a variety of ways. They have income taxes, and they have business taxes and they have property taxes, and so forth. And some of these are—some States have now gone to lottery systems to try to generate additional money, and so forth.

But, my general sense is that the pressure is just as great on the States and on taxpayers who pay in one form or another to State governments as it is taxpayers who pay into the Federal Government, who of course are the same taxpayers.

Mr. SCHIFF. Sure.

The CHAIRMAN. So I'm not sure that this really constitutes an answer. In other words, I think the people in Michigan today or any other State that if, in effect, you are saying:

Look, here's a major problem. The Federal Government has been dealing with it, at least in part, up until now and we would like to have the State government do more. So we would like you to, in

effect, come up with some additional resources to give to your State government to come into this particular area.

And so, in a sense, it's sort of putting a new responsibility on the taxing authorities, it seems to me, at the State level and telling them to go out and ask these same taxpayers to provide more money.

Isn't that what you're doing here?

Mr. SCHIFF. Yes, sir, we are. You are absolutely correct, but I think that is true in a lot of programs where there is a mixed responsibility between State and local, or State/local and Federal levels of government. What we are saying here is that you as a State or local government under this program would have the ability to target at least half of the money coming from the Federal Government to specific developments that need it.

I wish I could think of the name of lots of developments in Michigan. The one that pops in my mind is Brewster-Douglas, and that has got other connotations, obviously, but in a case like that where you have got a major community in desperate need of a solution to their problems, it would give the local and State government the ability to focus on that with Federal resources as well as their own.

The CHAIRMAN. Well one of the problems that we have, if you look at the 1980's, there has been a lot of this turning over of responsibility from the Federal Government to the State and local governments. Part of it has been program responsibility like in public housing, which you are proposing to go further on here, but it is also another very potent example—and you would be familiar with it from your experience in Kentucky—and that is the elimination of Federal revenue sharing where the Federal Government was using its broad revenue-raising strength to create some amount of money, and then sending it back out to the State and local governments to deal with some of the basic infrastructure and sort of central government activities that they felt the need to do.

In Michigan, for example, we got to the point where in many of the communities the revenue-sharing money was used to help finance the police and fire departments. So it became a very important part of providing a vital public service. It was not being squandered on nonsense items; it was being used in very critical items. And when revenue-sharing disappeared, what happened was there was great pressure to raise local taxes, or to cut back on the public safety.

So I take the time to discuss this because each one of these by itself, each proposal, is a free-standing independent proposal, but you cannot just view it that way. You have to view it in the context of the fact that there has been a pattern underway now for a decade of the Federal Government backing out of activities that it had previously had the responsibility for, and principally financed. And that is the reason we have got so many homeless people right now.

I mean, there has been a withdrawal of program support at the Federal level, and when you look around this city right now in terms of the homeless population on hot air grates, especially in the wintertime when they get on the hot air grates to keep from freezing to death, there are not any vacancies on any of the hot air grates in Washington.

We have a lot of them because these heating pipes run underneath the ground, under the sidewalks between the Federal buildings, and so we have literally hundreds and hundreds of people who stay alive in the wintertime by sleeping on these hot air grates to keep from freezing to death, as you well know. That is a new condition. That was not true in this town 15 years ago. I mean, you had some number of vagrant people, but certainly nothing of the size that we have seen.

In fact, we have just in the census this year for the first time ever conducted a special census to try to count the homeless because there are so many homeless. So it is a whole new condition.

So I take the time to say this because I think each one of these proposals looks quite small and insignificant and innocent by itself, but if you add this up all across the range of government, and if what we are doing is systematically dumping responsibilities back on State and local units of government who do not have the resources themselves to deal with them, we are not solving the problem and we are creating a huge tax burden at the State and local level, and that is coming from actions that are being taken at the Federal level.

I think we have to be honest enough to lay that out so people can see what is going on here, and so that they understand that there is a cross-connection between this burden-shifting, this responsibility-shifting that is being pushed onto the State and local units of government, and you are proposing to do some of that here.

I have a concern as to what the taxing capacity is of those State and local units of government, especially when so much of the money that is raised comes from the property tax. I mean, you can have one of these bizarre twists occurring, especially for you in the housing area, where you end up driving the tax burdens up so much at the local level that people are driven out of their houses because in part we have shifted responsibilities down to the local level from the Federal Government level even from housing programs. We can end up cutting the funding for housing, and end up in a perverse way knocking people right out of the housing that they now have because they have got property taxes that go up so much at the local level that they cannot pay them.

So we end up adding to the problem. I mean, I can see an element of that beginning to occur. I talk to a lot of senior citizens who are telling me that they are finding it very, very hard to stay in their homes, even though their homes are paid for, because they cannot cover the property taxes, they cannot pay the utility bills, and pay their doctor bills and other things that they need.

So I would hope that some voices of realism would start to be spoken and heard on this matter of how we assign the fiscal responsibility. I mean, if there is an urgent public need that has to be met out there, who is going to pay for it, and what is the appropriate funding source? And should the funding source be national in scope? Or should it be piecemeal and haphazard and scattered around the country in ways that oftentimes I think tend to disconnect the reality of what the real problem is, and the national scope of the problem from our ability to try to scrape together the money to deal with it.

So you are smart enough to see these things because you operate at different levels of government, and I think you have to start to be one of the voices that makes some sense out of this.

Mr. SCHIFF. Senator, a couple of things.

First of all, I have personally experienced what you were just talking about with property taxes. My bride's mother is a retired school teacher who has just had the unfortunate situation of having her property assessment raised 350 percent and wonder how in the heck on a fixed-income pension she pays this exorbitant increase in property taxes. So I can appreciate where you are coming from on that particular matter.

We also, when I was in local government, put 99-point-whatever-percent of our revenue sharing in the police department, and I can sympathize where you are coming from there.

As far as CIAP is concerned, I can tell you in discussions I have had with the Secretary, he is extremely supportive of the modernization effort in public housing. It is an enormous situation. We have a huge backlog. The data for the report that you referred to collected in 1985 and, frankly, the backlog has grown.

The CHAIRMAN. Yes. The problem is worse.

Mr. SCHIFF. Since then. We have been funding it, but the problems may actually be a little bit worse.

I can assure you that within the realm of budget realism, we will support the maximum amount possible for modernization. I also though think that it is very critical that we get other levels of government involved in trying to assist the 3 million families who live in public or Indian housing.

The CHAIRMAN. Well, I am all for that part of it. I think the local units of government do have to be involved. I do not think they should be disconnected at all.

Mr. SCHIFF. Right.

The CHAIRMAN. I think there is everything to be gained by having them connected in a very meaningful way. The question is: How do we amass the resources that we need to match against the scale of these problems, especially when we have let these problems go for about a decade and now they have gotten a lot worse. I just cited the growth in the homeless population. That is just one illustration of this.

So we have got to devote some larger amount of resources to try to deal with this problem, unless we are just going to pretend that it does not exist. The thing that I am concerned about is that after awhile, if you let these terrible social problems go unattended and people do not have a decent place to live, and there are not jobs for people particularly in the underclass and the very low-income areas, and there is a bad school situation and so forth, what happens is that your society starts to unwind.

Drugs become part of the picture. A lot of other things do. There are not decent economic opportunities in many instances for people to make the kind of a living that really sustains the cost of an apartment—

Mr. SCHIFF. True.

The CHAIRMAN [continuing]. And transportation, and just normal functioning of everyday life. And you can get a kind of Clockwork Orange society starting to develop. You see signs of that today. You

see it in violent outbreaks of situations all over the place and a lot of other manifestations of it.

I would hope that for your part, because you are taking one of the toughest jobs in Government—we have spent a lot of time talking about Indian housing and Native American housing, but the public housing part of it and the question is: What is happening with trying to make sure that there is some decent living structure around the people who are at the lowest income levels in our society?

Many of them are children. Will they have any kind of decent opportunity to come into this world and into their lives and come up in a way that enables them to fulfill their potential and be good citizens and be able to be constructive parts of our society as a whole?

We are falling so far short in this area that somebody is going to have to not only get the most out of what money we are allocating, but an essential part of your job is going to be to wake other people up as to the dimensions of the problem and the fact that if we do not spend some intelligent amount of money on the front end to create positive conditions with housing, and things that spring from that in terms of people having good lives and being able to have good development circumstances, you will have a situation where worse things will happen.

And dealing with the worst things becomes even more expensive, whether it is building prisons, or the cost of crime being loose in our society, or just wasted lives—wasted lives that number literally in the several millions. No Nation can afford that. Certainly the United States cannot. I do not think we should ever consent to afford it. Just in human value and humane terms, and in the competition world that we now live in, we cannot succeed as a nation facing off against a united Germany, and a Japan, and the other nations, if we are not making sure that we are realizing our full human potential.

So this is no longer just a question of whether our value system enables us to care about strangers that may live across town, or across the State, or across the country that we never see, it has to do with our own fortunes now being tied to the fortunes of everybody else.

So we have got to find a way to see a chance for everybody to come ahead. Everybody has to get up to a higher level of achievement and performance and living standard. To the extent that your two sons here, or mine, my children, are going to have a good future is going to depend very importantly on the future that all of the other young people in the country their age are also having. Because if those kids are not making it, the fallout from that condition is going to land right on the kids who do make it and who are more fortunately situated as your children might be, or as mine are.

So I spend the time on this today because we do not often do that. We usually go through a series of back-and-forth questions and these hearings are conducted in that fashion. But I think we are at a turning point. The fact that you come in a generational period in terms of your own age and with your own family situation with that local experience at a high achievement level where

you have won these awards and are now at a very high policy position, or shortly will be in the Federal Government picture, you have to become part of what enables the country to conceptualize what is happening to us as a whole, as a national American family, if you will.

You have got to have the courage to speak out about it, even to the point of saying some things that other people might not want to hear. There will be times when the Department of Management and Budget is not going to want to hear you say that more money is needed for an urgent human problem. Even if you say to them: Look, you need to spend this much now in an investment form. If you do not, you are going to end up spending this much later to deal with the wreckage of unmet problems.

People are going to say: We will worry about that later. That is 10 years down the road. We cannot worry about that now because we are in this year's budget cycle, so we can only worry about right now. We have got elections coming up, and other things, pledges to keep from the last election, and so forth, so we can only concentrate on right now.

You have to be strong enough and willing enough to really help bend that debate and give it the freshness of today's realities. And if you are willing to do that, you can make a big contribution to the country. If you decide to shy away from that and not do that, then you will fill this job for a period of time but it probably will not make a great deal of difference one way or the other.

So my appeal to you is to see that aspect of the leadership that is required here that falls on you, and which I think you are equipped to give. You speak of your mother-in-law's situation. You bring the kind of background that ought to enable you to help sensitize others to things that I think we have not paid sufficient attention to in the executive branch of government.

Congress has the same job of getting itself up to the awareness and sensitivity level, but in terms of this big Federal executive branch apparatus, that fresh thinking is something that you—I think it is the main thing you can provide.

Mr. SCHIFF. Senator, first of all, I appreciate your thoughts on the matter. Being candid with you, I cannot say that on a personal basis I am looking forward to moving to Washington. I happen to like Louisville, KY. It is a great town to live in and to raise a family in. I am coming because I hope I can make a difference. If this committee and the Senate sees its way to confirm me, that is my intention—not to come here to sit in a chair, not to come here to try to occupy a "position," but to make a difference.

Only time will tell whether you will feel that I have made that difference, but that is clearly my intent.

The CHAIRMAN. Well, I think it is good that we talk about these things—

Mr. SCHIFF. Sure.

The CHAIRMAN [continuing]. And I sympathize with your pain that you feel about leaving Louisville and coming to Washington. I left my home area to come to Washington 24 years ago, and I yearn to live in Michigan. I would much rather live in Michigan. The problem is, if you take this job you are unable to do that.

Mr. SCHIFF. The Secretary is unwilling to move the Department to Kentucky. [Laughter.]

The CHAIRMAN. I am going to give you some additional questions to answer for the record that I think are very important.

There is one that I do want to raise with you now. I am going to ask you to respond for the record on some specific issues. I am going to give you some questions on lead-based paint problems that have arisen.

Mr. SCHIFF. All right.

The CHAIRMAN. I want to draw you out a little bit, however, on the resident management issue in public housing. I know Secretary Kemp has been quite outspoken on this and the question of how do you empower people in public housing so they have more of a say and have more of the thrust and the responsibility of what goes on in their own home living settings.

Mr. SCHIFF. Right.

The CHAIRMAN. I think it is a goal that is widely shared. Certainly it is one that I share. How do we do it? How do we accomplish these goals? How do we set up standards that would evaluate how resident management can be put in place in a way that can really start to improve the living environment of public housing residents?

Mr. SCHIFF. Senator, that is a question near and dear both to the Secretary's heart and to mine. Resident management cannot and will not happen overnight in a given site. The residents of public and Indian housing need the opportunity to train themselves so that they have the capability of performing.

You need to start with the basics. The first thing that you need to do is have a willing public housing authority that will accept input from the residents. Help train the residents just in basic organizational ability so they can organize, so that you can have a tenant council in a given development. Or, if you have multiple developments in a community, a citywide or a PHA or IHA-wide council where you can have input. Where the board that generally governs a housing authority can receive input not only from their paid staff, but also from the beneficiaries of the program, the residents of that development.

As they grow and as they strengthen in this process, then you could potentially move to management. We think a good model—and there are all sorts of different models—but a good model is where you actually have comanagement with the staff and the resident group working side by side. As they gain experience, then the staff go off here and the residents can take over full management, as has happened in some developments.

When Jack Kemp came to HUD there were 13 developments that were being managed by residents—13. We now have over 100 in training. Due to the generosity of the Congress, you have funded for the last couple of years a \$2.5 million pot of money that we have allocated to resident groups for training purposes.

I do not think you can just turn over the keys to residents in most communities. They are not ready for it yet. But the capability is clearly present. What we need to do is to start with the basics of input, resident involvement, and allow those groups to grow.

Also, I do not think we should be in a position, quite frankly, of forcing residents to take over management of their development. It has got to be a willing situation. They have got to want to do it. In some communities, which I find hard to understand personally, but in some communities for example where we have tried to organize residents to help combat crime, in my neighborhood we call it "Block Watch" and people participate very willingly. In some communities in public housing, I have seen it where they say you are trying to turn us all into snitches. That is not the desire at all. The desire is to try to help people help themselves.

A basic philosophy: Teaching people how to fish rather than giving them fish.

The residents of public and Indian housing can do enormous things on their own, but they need our assistance. By "our assistance," I mean Government's assistance as well as a public housing authority's assistance. The National Association of Housing and Redevelopment Officials, NAHRO, for example, has set up a task force that is trying to work within the industry to bring these resident initiatives home to their individual members.

I think that as we go along, as this develops more fully, we are going to see more and more empowerment to the residents of public and Indian housing. That is clearly a goal of this administration.

The CHAIRMAN. Let me ask you your own sense, now that you have been working on this for a period of time, as to how serious the problem of drug activity and penetration of drug traffic has been in public housing units across the country?

Mr. SCHIFF. I think it is incredible. I had the opportunity last week to be with the Public Housing Authorities' Directors Association in Nashville representing the Secretary. This particular organization grants a scholarship to a resident of public housing, a college scholarship to help that resident go to school.

They honored a young lady from a development called Carmelitos in Los Angeles County this year. She was the recipient of their scholarship award. It just so happened that I had been in Carmelitos, and it was one of the most heart-rendering situations I have seen. It is a beautiful development. It has been rehabilitated. It is absolutely gorgeous. But yet there is a 10-foot high concrete block fence separating this development from an elementary school. Why a 10-foot high concrete fence? Because a school child was shot in the stomach by a bullet from a drug dealer, a stray bullet. That is gut-wrenching when you see that.

When you walk through a Cabrini-Green in Chicago and see former playgrounds, and primarily basketball courts—and for a Kentuckian that is sacred territory—that are now war zones for gangs, the problem is incredible. The one thing that I find most interesting about it is that the studies that I have seen report that most arrests for drug-dealing in public housing are for nonresidents.

Primarily it is not the resident doing the dealing. It is people coming in and seeing public housing as a drug "safe zone" instead of a "drug free zone." Again, we need to work more with local governments to police our developments better.

The CHAIRMAN. I wonder—I have seen that, too. I have been visiting both local police efforts in Michigan, and also public housing units, and I have seen that happen. I have seen some cases where intimidation is used to compel somebody in a public housing unit to become a place, a haven where drug dealers can go, and law enforcement people show up, and what have you.

I am wondering if what we should not do is to try to establish a few models where we actually base—where we know we have a serious drug problem, where the public housing people themselves are frightened to death and are afraid their own kids are going to get shot or drawn into this thing. I have talked to any number of people living in public housing who are terrified about that problem in their midst and feel powerless to do much about it, because drug dealers are armed and they are sort of a law unto themselves.

I am wondering if we should not take maybe a dozen, or a half-dozen, or whatever the right number, public housing units across the country where we know we have a serious drug problem and provide the money to put in a full-time police officer or a public safety person—I am talking about somebody that is trained, and that is tough, and that is a professional, and maybe you need more than one depending upon the size of the unit, but where you actually establish a public safety, a police presence in that unit connected to the local police department? Maybe it would be paid for by the Federal Government as part of this program so that we can put ourselves in a position to wage this war.

I mean, there is a war going on. The problem is that the drug lords seem to me to be winning it. One of the most vulnerable places are the public housing units where the drug people I think find it easiest to go.

What I have noticed is that what happens is, you say outsiders come in, and they will use a site within a public housing area. Then there is all this drive-by traffic. The word gets out, and cars show up, and people walk over and you see these transactions through car windows and so forth.

It seems to me that if we actually had a dedicated effort where you had a police presence in some of these areas where we have identified a serious drug problem—these are really sensitive things, but to try to do it where we know we have got a problem that needs to be combated—it seems to me we would be better off.

I went out on a drug raid recently in the down-river area of Detroit and we were going over into an area where there was public housing. You could see where a cluster of drug dealers had set up shop for this drive-by traffic through car windows.

We went by in an unmarked police van to just do some surveillance of the area and spotted this thing. Then an effort was made in the time immediately thereafter to set up a group of officers who would come in from different directions and try to apprehend these people. But I noticed that there was a young person on a motor scooter who was essentially the mobile look-out for the drug apparatus. It was this person's job to kind of move around and keep an eye out for what they had learned to understand were the earmarks of a police raid that was about to take place.

Now these local jurisdictions are short on police resources, anyway, so it is not as if it is an easy thing for them to do just to

move right in and hit one of these operations when they see it. But it was so obvious that the drug traffickers had dedicated assistants who were mobile people with these phones and so forth to alert everybody, so everybody could disperse when it looked as if a raid was underway.

I was struck by the fact that we need to have somebody on our side, somebody that is on our team in that neighborhood who is representing law and order, if you will, and who has got the resources and the connection in, and so forth, and these are high-risk jobs. Because as we know from all the homicides in Washington, the drug lords play for keeps. But if we are not going to just surrender a part of our society to the drug lords, it seems to me, and our public housing units, we have got to have some muscle and some law enforcement strength on site in these places.

I think we ought to do it on at least an experimental basis. I think you ought to take the five worst cases in the country and spread around the country and fight tooth and nail to get whatever money it takes to put some law enforcement muscle on-site and keep it there, and see if we cannot break this pattern.

That may be what it takes. You know, we may have to do that on a very wide-spread basis, and it may cost us some money to do it, but I suspect that it will cost us less to do that than the human wreckage and everything else that piles up from looking the other way and not trying to hit it head-on.

Mr. SCHIFF. The real tragedy is not only the drug dealers but the way they are corrupting the youth. They are bringing really extremely young people, younger than the age of my sons for example, in as lookouts, or as runners, or what-have-you. It is unbelievable.

Senator, due to your generosity and that of your colleagues in the Congress, we have almost \$100 million, \$97.4 million, in this year's budget for trying to combat drugs in public housing. A NOFA, a notice of funding availability, will be issued very shortly on the distribution of this money.

The tendency of the program, or the way the program was designed at this stage of the game, is not to dictate to the local communities how to combat drugs, but to give local communities an opportunity to apply for sums under a plan that they develop. One of the options that they have is to use Federal money to pay for local police protection in the developments, which is what I think you are talking about.

The CHAIRMAN. Right.

Mr. SCHIFF. So long as they are already funding the developments as they would fund other areas of the community, and this is extra and above what would typically be provided, but because of the lack of local resources they just cannot provide extra police protection to public housing developments.

The money will be different than the round we did last fall because you only had \$8.2 million last fall. We had to put caps that were pretty low. The most that one could apply for was \$250,000. Under this year's grants, the caps would be changed so that for the larger authorities it would be on a per-unit basis. So the more units you have in your authority, the more you could apply for, assuming you had an acceptable plan to combat drugs in your project.

But one of the things that is foremost on the minds of this administration, one of the six priorities of the Department, is to help make public housing drug free. We could not agree with you more.

The CHAIRMAN. Well, I think what you may also want to do—I am all for the local initiative and people trying what they think will work in their given area—I also like the idea of taking two or three extreme cases, the toughest and the meanest ones that you have in the country, and applying the resources in whatever amount it takes to break the back of the problem there so that we learn the technology.

In other words, you in effect say: Look. We are going to take cases that we know are in effect out of control. We are going to go in and we are going to take back control. If it takes putting full-time law enforcement people in there paid for out of this pot of money, we are going to do it because we are going to find out what it takes to get it done in at least some real-life situations.

And from that then, you know, step back and we can discuss what we have learned from that. I mean, what is the true nature of a solution that works? And how expensive is it? And what do we get in the way of results? And how lasting is it, and so forth, so we can sort of do some cost/benefit relationships here so we can make a competent case to the American people as to what it takes to do this.

I think the public generally wants us to wage war on the drug network—and I mean wage an honest-to-God war in which nothing is held back on the side of the Government and the citizenry. Clearly the amount of money that is being generated by the drug lords is such that they are becoming a physical force, a violent force, and almost a de facto Government in the areas where they are located unto themselves. And in some cases, they are obviously stronger than our established Government.

So that is why they have been able to take over in certain areas, and they run the show. They have in effect found that they can do that, and they are not going to be sufficiently challenged. I think in these public housing areas that we know now to be some of the worst drug havens in the country, that we ought to—and I think Jack Kemp is the guy to lead this, and I will help you do it—

Mr. SCHIFF. Thank you.

The CHAIRMAN [continuing]. But I think we have got to have, with your help, we have got to have an effort that says we are going to take this one, and this one, and this one, and whatever it takes, we are going to find out how we fix that problem.

Then we will have something in the way of knowledge that I think we will be able to use in other places.

Mr. SCHIFF. You have my pledge, Senator, to do everything I can on this war on drugs.

The CHAIRMAN. I am going to give you some additional questions to answer for the record. I know some of my colleagues have some questions, as well. Some of those questions will deal with supportive services. There will be others that deal with the HOPE proposal that has been incorporated in S. 566 and House Resolution 1180, and we will give those to you for the record to respond to.

I think we have had a good discussion today. I think you are equipped to do this job. I appreciate your earlier pledge with re-

spect to this matter that Senator Dixon raised, and I take you at your word. I think you can do a good job, and I intend to support your nomination.

Mr. SCHIFF. Thank you, Senator. I appreciate it.

The CHAIRMAN. With that, the committee stands in recess.

[Whereupon, at 11:45 a.m., the committee was adjourned, subject to the call of the Chair.]

[Joseph G. Schiff's prepared statement, biographical sketch, and additional material supplied for the record follow:]

Statement of
Joseph G. Schiff
June 7, 1990

Chairman Riegle, Senator Garn, and members of the Committee, I come before you as President Bush's nominee for Assistant Secretary for Public and Indian Housing.

I am extremely grateful that the President has expressed his faith in me by nominating me to this position of trust and responsibility. I view this opportunity to work for the President and our outstanding Secretary, Jack Kemp, as a once in a lifetime chance to serve the 3 million residents of public and Indian housing and the taxpayers of America.

For the past year I have had the opportunity to serve Secretary Kemp as his Special Advisor for Public and Indian Housing. This has afforded me an unparalleled viewpoint to sharpen my ability to address the problems facing America's housing authorities.

I believe I am qualified for this position due to my life long background in housing and government service. I have spent 14 years in the real estate brokerage business, served on Capitol Hill as a Legislative Assistant to a US Congressman, served my community for 7 years as Deputy County Judge/Executive, spent 3 1/2 years as Manager of the Kentucky HUD Office, and as I stated earlier, I have spent the past 14 months as Special Advisor to the Secretary for Public and Indian Housing.

I am humbled by the thought of serving in this high position. It is an awesome responsibility that I believe I have spent the

last 20 years preparing for. While I certainly recognize the problems facing public and Indian housing today, I think I am up for the challenge.

I have five goals for my tenure as Assistant Secretary for Public and Indian Housing.

First of all, I want to implement and institutionalize the President and Secretary's priorities for public and Indian housing. I want to expand homeownership and affordable housing opportunities. I want to empower the poor through resident management and homesteading. I want to assist enforce fair housing for all -- especially those in public housing. I want to help make public housing drug free. I want to help end the tragedy of homelessness.

These priorities are objectives we can all agree upon. I am particularly interested in the area of resident involvement in housing authorities. I believe we need to place more faith and more responsibility in the residents.

We need to unleash the power of the resident to assist themselves. We in HUD need to refocus our attention on our true clients -- the residents of public and Indian housing and the taxpayers of America. We need to maintain a strong supportive relationship with our service partners -- the housing authorities.

Secondly, I believe we need to increase the accountability of the public and Indian housing industry to our true clients. While most of the 3300 public and Indian housing authorities in the country provide quality housing to their residents, we have significant problems particularly in many urban centers. This is

totally unacceptable.

There are two worlds of public housing -- the troubled housing authorities and all the rest. They really are two different situations and need to be treated as such. Unfortunately, the image of public housing has been tarnished by the incompetence of the few troubled agencies. It is seldom that the positive side of public housing is seen by the majority of our citizens and the media. The overwhelming majority of housing authorities provide their residents with decent, safe and sanitary housing.

Third, I want to incentivize public and Indian housing. I believe we must provide incentives for positive behavior both on the part of the residents and the part of the housing authorities. All too often now, negative behavior is rewarded and positive actions are penalized. Residents of public and Indian housing communities transitioning from welfare to productive work are, relatively speaking, the most heavily taxed citizens in our nation. Housing authorities are rewarded with extra funds for allowing developments to deteriorate. This must be reversed. Instead we need to reward positive management actions. Together we can accomplish this goal.

Fourth, I believe we need more inter and intra governmental cooperation to assist both the housing authorities and their residents. We in the federal government need to harness the resources of all federal agencies dealing with the less privileged amongst us so we can attack their problems in a holistic manner. Turf must be cast aside so people can benefit. Recently, Secretary Kemp executed an inter-agency agreement with Secretary Sullivan to

serve as a basis for more cooperation between HUD and HHS. This spirit must be continued with more agencies. We must also involve state and local government more with the problems housing agencies face. The residents of public housing are also residents of their local communities and should be treated as such.

Finally, I want to enhance the responsiveness of the Office of Public and Indian Housing both in headquarters and throughout the country. I believe we can and must increase the services we provide to both our clients and our partners. They deserve no less. Management systems in Public and Indian Housing need to be upgraded and a spirit of true public service must prevail.

In conclusion, I look forward to working with Secretary Kemp and you to improve the quality of life for the 3 million residents of public and Indian housing. My wife, Polly, my sons David and Blair, and my mother, Elaine Schiff Rietze, join me today in anticipation of this fantastic challenge. We are looking forward to me serving you and the American people as the Assistant Secretary of Public and Indian Housing. I am happy to answer any questions you might have.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: SCHIFF JOSEPH G.
(LAST) (FIRST) (OTHER)

Position to which Date of
 nominated: Asst. Secretary for Public & Indian Housing nomination: April 19, 1990

Date of birth: 22 Aug 1946 Place of birth: Chicago, Illinois
(DAY) (MONTH) (YEAR)

Marital status: married Full name of spouse: Polly Sherman Schiff

Name and ages
 of children: David Ira Schiff - 14
Blair Lewis Schiff - 11

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>American University</u>	<u>1964 - 8</u>	<u>BA - Gov't</u>	<u>May '68</u>
	<u>U. of Louisville Law</u>	<u>1971 - 4</u>	<u>JD</u>	<u>May '74</u>

honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.
 SEE ATTACHMENT - SCHEDULE A

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

[illegible]

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

SEE ATTACHMENT - SCHEDULE C

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

SEE ATTACHMENT - SCHEDULE D

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NONE

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

SEE ATTACHMENT - SCHEDULE E

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

NONE

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

NOT NECESSARY

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO

3. Has anybody made you a commitment to a job after you leave government?

NO

4. Do you expect to serve the full term for which you have been appointed?

YES

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

IN 1984 AS PRESIDENT-ELECT AND IN 1985 AS PRESIDENT OF THE
 KENTUCKY ASSOCIATION OF REALTORS, I LOBBIED KENTUCKY'S
 CONGRESSIONAL DELEGATION ON BEHALF OF REAL ESTATE ORIENTED
 LEGISLATION.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I WILL SELL ALL HOLDINGS INVOLVED.

Civil, criminal and
 investigatory
 actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

SEE ATTACHED

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

NONE

SCHEDULE A

- 1988 - Outstanding Rating as Manager, Kentucky HUD Office
- 1987 - Outstanding Rating as Manager, Kentucky HUD Office
Housing Hero Award from the Kentucky Association
of Homebuilders
First recipient of the Manager of the Year Award for
HUD's southeastern region
- 1986 - Outstanding rating as Manager, Kentucky HUD Office
Leadership Kentucky selectee and later graduate
- 1985 - President, Louisville Apple Computer Users Group
Board of Directors, National Association of Realtors
President, Kentucky Association of Realtors
- 1984 - President-Elect, Kentucky Association of Realtors
Chairman, Kentucky Association of Realtors' Strategic
Planning Committee
Chairman, Kentucky Electoral College
- 1983 - Vice President, Kentucky Association of Realtors
- 1982 - Kentucky Realtor of the Year
Louisville Realtor of the Year
Treasurer, Kentucky Association of Realtors
- 1981 - Treasurer, Kentucky Association of Realtors
Chairman, Kentucky Realtors Political Action Committee
- 1980 - Delegate to the Republican National Convention
- 1976 - Chairman, Louisville and Jefferson County Republican
Executive Committee

SCHEDULE B

Organization	Office	Dates
Kentucky Bar Association	None	1974 Present
National Association of Realtors	Member	1971 - 1985
	Director	1985
Kentucky Association of Realtors	Member	1971 - 1985
	President	1985
	Pres.-Elect	1984
	Vice-President	1983
	Treasurer	1981 - 1982
	Director	1980 - 1985

Louisville Board of Realtors	Member	1971 - 1985
	Vice-President	1979, 82, 83
	Treasurer	1978, 80, 84
	Director	1978 - 1980 1982 - 1984
Kentucky Real Estate Exchangers	Member	1976 - 1985
	Director	1977 - 1980
Realtors National Marketing Institute	Member	1973 - 1985
Kentucky CCIM Chapter	Member	1979 - 1985
	President	1982
	Director	1979 - 1985
Leadership Kentucky Alumni	Member	1986 Present
Louisville Apple Computer Users Group	Member	1984 - Present
	President	1985
Louisville Zoological Gardens	Member	1981 - 1987
Louisville Historical Society	Member	1974
Louisville Junior Chamber of Commerce	Member	1974
Louisville Chamber of Commerce	Member	1973 - 1973
B'nai Brith	Member	1971 - 1973
American Jewish Committee	Member	1978 - 1980
Lincoln Club of Kentucky	President	1971 - 1985
Kentucky Republican Party State Central Committee	Member	1976 - 1984
Kentucky Third District Republican Committee	Member	1973 - 1984
	Chairman	1976 - 1977
Louisville and Jefferson County Republican Executive Committee	Member	1973 - 1985
	Chairman	1976

SCHEDULE C

Employment	Title	Location Date
US Dept of HUD	Manager	Louisville 1985 - Present
Joe Schiff, Realtor	Broker	Louisville 1985
Elaine Schiff, Realtors	Partner	Louisville 1971 - 1985
Jefferson County Government	Deputy County Judge	Louisville 1978 - 1984
US Army	Clerk	Washington 1969 - 1971 Ft Lewis 1969
	Basic Trainee	Ft Knox 1969
Rep. Bill Cowger	Legislative Assistant	Washington 1968

SCHEDULE D

Federal Experience - For the past year, I have been a Special Advisor to the Secretary for Public and Indian Housing. I have been employed as Manager of the Kentucky HUD Office since October 13, 1985. Prior to this, I served two years in the United States Army and worked as a gofer and later legislative assistant for US Congressman William O. Cowger.

State Experience - None other than my relationships during my other positions.

Local Experience - I served seven years as Deputy County Judge/Executive for Jefferson County (Louisville) Kentucky. This is the second ranking position in this urban county government. I also served as the Alcohol Beverage Control Administrator for five years. This gave me administrative law experience.

SCHEDULE E

- 1984 - Campaign Manager, Mitch McConnell Senate Committee
- 1984 - Chairman, Electoral College in Kentucky
- 1984 - 1976 - Member of the Kentucky Republican State Central Committee
- 1984 - 1973 - Member of the Louisville and Jefferson County Republican Executive Committee
- 1984 - 1973 - Member of the Kentucky Third District Republican Committee
- 1983 - Advisor to a bi-partisan campaign to merge the governments of the City of Louisville and Jefferson County
- 1982 - Co-Campaign Manager of a bi-partisan campaign to merge the governments of the City of Louisville and Jefferson County
- 1981 - Campaign Manager of the Re-Elect Mitch McConnell County Judge/Executive Committee
- 1980 - Delegate to the Republic National Convention
- 1979 - Advisor to the Republican local campaign
- 1977 - Campaign Manager of the Mitch McConnell for County Judge Committee

QUALIFICATIONS

I believe I am well qualified to serve President Bush and Secretary Kemp as the Assistant Secretary for Public and Indian Housing for the following reasons:

For the past year I have been serving Secretary Kemp as a Special Advisor for Public and Indian Housing. In this capacity I have had the opportunity to gain an indepth knowledge of the program areas and participate in devising ways to enhance their operation.

I have three and one half years experience as manager of HUD's Kentucky office. In addition to being familiar with HUD's mission, I directed the oversight of over 100 conventional public housing agencies. While Manager, I developed a particular interest in the public housing area.

In 1988 I was the first manager in HUD's Region IV to be honored as Manager of the Year. I attribute part of this honor to our oversight of Kentucky's public housing agencies. Also in 1988, HUD instituted two new national awards in the public housing area. One was for sustained superior performance and the other was for a particular superior accomplishment. A number of HUD field offices were honored, but only one was honored in both categories -- the Kentucky HUD Office.

I have served as the legislative assistant to a United States Congressman. I believe this service has better prepared me for this position. I fully understand the importance of establishing and maintaining good relationships with the congress and will strive to accomplish this objective. I understand and respect the role of congress in our governmental system.

I have served seven years as a non-elected local official. This service has enabled me to better understand our federal system of government. This is particularly important in the position of Assistant Secretary of Public and Indian Housing since our programs are actually implemented by independent local agencies.

I have had extensive dealings with the media and numerous opportunities to speak in public. I have testified before state legislative committees. I have served as an administrative law judge.

My 15 years in the real estate business is a strong compliment to my government service. I will bring to the position a strong private sector orientation. In addition to understanding how government works, I fully appreciate the real estate market. As a Realtor, I was one of the relatively few to earn the prestigious CCIM designation (Certified Commercial Investment Member). I also earned a GRI (Graduate, Realtors Institute) designation. Although public and indian housing involves much more than sheer real estate management, with the maintenance problems we have today, it will be invaluable.

Perhaps more importantly than anything, I really want to be Assistant Secretary for Public and Indian Housing.

INVESTIGATION

As a result of the background investigation into my proposed appointment as HUD's Assistant Secretary for Public and Indian Housing, an investigation has been conducted by the FBI, U.S. Office of Special Counsel, and U.S. Justice Department into my political activities while serving as Deputy County Judge/Executive of Jefferson County, Kentucky from January, 1978 to January, 1985.

As Deputy County Judge/Executive, I was legally the number two person in the 2000 person county government. This was a part-time position which was redefined in 1978 due to the passage and implementation of a judicial amendment to the Kentucky constitution. I served the County Judge/Executive (CJ/E), Mitch McConnell, in a variety of ways with three primary functions. I served as a chief policy advisor to the CJ/E. I performed numerous ministerial actions for the CJ/E. I served as the county's Alcoholic Beverage Control Administrator.

The aforementioned investigation revolved around my solicitation of funds for a legally registered political campaign committee. Did my activities conflict with 5 U.S.C. 1501 et seq. - the State and Local Government Hatch Act?

The fact of the matter is, outside official hours, I did request some political appointees of the CJ/E (approximately 2 to 3 percent of the work force) to contribute to his re-election effort. This contrasts with previous county administrations who required all employees to contribute a percent of their county pay to a campaign fund. This volunteer effort was a campaign reform effort at that time and not hidden from the public. Every contribution made was appropriately reported to the Kentucky Registry of Election Finance.

The key question addressed by the OSC was whether or not I was covered by the federal statute. Despite the fact that federally oriented activities constituted less than two to five percent of my time, the Office of Special Counsel concluded that I was "principally employed in connection with federally funded activities" due to the fact that some of my official activities were "in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency." According to OSC, that conduct was covered by the federal State and Local Government Hatch Act. They found the mere solicitation of campaign contributions constituted "coercion." The fact that people said they did not feel

threatened was immaterial to OSC. Despite the fact that there is no statute of limitations applicable, they concluded their investigation by declining to take further action (the incident occurred nearly 10 years ago) and issued a warning letter.

The matter then went to the U.S. Department of Justice, Office of Legal Counsel. They examined the OSC letter and concluded that "we believe that OSC applied an incorrect rule of law in concluding that Mr. Schiff was covered by the Hatch Act while employed by Jefferson County. Moreover, the facts set forth in the OSC letter fail to demonstrate that Mr. Schiff was covered by the Hatch Act under appropriate legal standard."

Based on the Justice Department opinion and the decision by OSC not to take further action, I am satisfied that this matter is behind me. All my political activities ceased the moment I became a federal employee. No county employee ever complained of political coercion while I was employed by the Jefferson County Government. I am extremely proud of my political activities and my efforts to both provide good, honest political campaigns and the highest quality of public service.

ANSWERS TO QUESTIONS FOR JOSEPH G. SCHIFF
FROM SENATOR DONALD RIEGLE
HEARINGS ON NOMINATION TO HUD
JUNE 7, 1990

Q. 1. Over the past decade, the role of public housing has changed dramatically. Public housing is no longer responsible for just providing housing. It also must provide access to job training, day care, and social support for very poor people with very serious financial, medical, and mental health problems. As a result, the gap between public housing rent revenues and operating costs is wider than ever.

As Assistant Secretary for Public and Indian Housing, what do you plan to do to address this crisis?

A. 1. The question implies a more holistic approach to the resident of our public housing communities which I totally agree with. America's 13,000 public housing communities need to become more than a place to come out of the rain. They need to return to the original concept where a family can receive assistance to help them get back on their feet and become self-sufficient. We need to break the inter-generational hold public housing has on too many families.

The public or Indian housing agency is not the surrogate parent. Their primary responsibility lies with the provision of shelter. On the other hand, I do not see this as their sole responsibility. As we adopt a more holistic approach, the housing authorities need to coordinate the provision of needed social services to their residents.

An example of what I am advocating was developed by Secretary Kemp last year in Operation Bootstrap and has now been adopted in both the Senate and House housing authorization bills. This Section 8 oriented program links through the PHAs the provision of housing assistance with social services to assist residents with their pursuit of educational and employment opportunities. This program, and its predecessor, Project Self-Sufficiency, both conducted by PHAs, have been enormously successful without requiring any increase in public housing operating subsidies or Section 8 administrative fees. In fact, the program is so popular that for last year's Operation Bootstrap we had eight times the applications we could afford to fund.

Secretary Kemp and I recognize how critical both operating subsidies and modernization funds are to accomplish these goals. It is imperative that public housing communities be well managed and have decent, habitable residential units. While still slightly below last year's appropriation, the Secretary has

requested twice the level of funding for CIAP than last year's budget. At the same time, the Department is taking aggressive action to move over \$3 billion on unspent CIAP funding through the PHAs pipeline.

As this money is appropriately utilized, funds will be freed in the operating budget for other operating expense priorities such as coordinating the provision of social services to residents. I also believe the implementation of the new Comprehensive Grant Program will enable agencies to spend their modernization money more wisely. Curing physical problems will reduce the gap between rental income and operating costs.

In addition to the residents' need for shelter, their needs encompass program areas of several other federal agencies. For this reason, HUD is taking the leadership of coordinating on a national level the provision of services to residents of public and Indian housing. For example, our Memorandum of Understanding with HHS will lead to a number of their programs being targeted to the residents. Upon confirmation, I intend to duplicate this process with other agencies such as the Department of Labor, the Education Department, the Small Business Administration, and the Agriculture Department. There is no need for HUD to duplicate services already being provided by other federal agencies, but we must see that the residents of public and Indian housing receive their fair share.

Q. 2. Secretary Kemp's HOPE proposal, which has been incorporated into both S. 566 and H.R. 1180, provides funding to support the transfer of public housing units to low income tenants. The Secretary has pointed to Kenilworth-Parkside, a District of Columbia public housing development-turned-tenant-owned cooperative, as a prime example of what HOPE can accomplish. However, a GAO study of Kenilworth-Parkside concluded that tenant ownership can only be attained at a high cost to the federal government. It is expected that Kenilworth-Parkside will cost the federal government between \$70,000 and \$74,000 per unit to renovate. This compares to an average cost of \$10,000 per unit in the nation -- or to \$50,000 per unit in the District.

Given, the high cost of the project, do you feel that HOPE provides the most cost-effective manner to provide low income housing to as many persons as possible?

What implications does the goal of homeownership of public housing units have on the thousands of persons currently on the waiting lists for public housing?

A. 2. A study by the accounting firm of Laventhol and Horwath

has indicated that the Department will save eleven million dollars over the next fifteen years due to the cost effectiveness of the Kenilworth-Parkside homeownership conversion.

GAO's estimate of a \$73,806 per unit cost for modernization at Kenilworth-Parkside was speculative (and not approvable under HUD policies), and did not consider local contributions. The D.C. PHA is one of the most "troubled" of all PHAs so designated by HUD, and the Office of Public and Indian Housing under my leadership will act aggressively to reform such mismanagement nationwide. The inefficiencies of the District's Public and Assisted Housing administration of CIAP, not Kenilworth-Parkside homeownership, are largely to blame to the extent Kenilworth-Parkside's rehabilitation can be considered costly. Rehabilitation costs projected for Kenilworth-Parkside are not indicative of costs of other past homeownership projects or future anticipated conversions projected under HOPE.

In addition to the housing cost savings that can accrue to the federal government due to homeownership conversion, important and significant social costs are saved and economic needs met through the resident management model. Kenilworth-Parkside is one of many models for homeownership. Please find enclosed a case study book of various successful forms of low income homeownership efforts including several for public housing homeownership.

HOPE protects opportunities for those on the waiting list through requirements for replacement housing where localities do not impose resale restrictions. Replacement may be provided through new public housing development, rehabilitation of vacant public housing, the provision of Section 8 assistance, housing provided by the low income housing tax credit, comparable state and local programs or units provided by the HOPE grants for non-profits.

A number of PHAs that presently operate homeownership programs plan to use the proceeds of homeownership sales to provide further homeownership opportunities. Such revolving funds have the potential to expand the stock of affordable housing nationwide.

Q. 3. In 1987, the Congress directed HUD to test and abate lead based paint in all public housing by the end of 1994. After two years of intensive consultation with numerous Federal agencies, public housing authorities, lead experts and practitioners, the Department issued guidelines on April 1st. This regulatory action was a major accomplishment and you deserve credit for the role you played in making it happen.

Now comes the difficult task of implementation. Presently, most actors involved in the CIAP program -- HUD staff, public housing officials, tenants, general contractors, architects and

engineers, construction and abatement workers -- are not familiar with lead-based paint testing and abatement activities. In addition, reliable laboratories to verify the accuracy of testing will need to be identified. Finally, adequate and affordable liability coverage for abatement work will need to be established for the industry.

Please lay out for the Committee the activities that you are undertaking to first, educate the public housing community; second, establish an accurate system for testing; and third, ensure that insurance is available for this work.

Please also give the Committee a sense of the cost of these testing and abatement activities -- on a project level and for the system as whole.

A. 3. Since the issuance of the guidelines, the Department has taken the following steps to assure effective implementation of the guidelines:

Training - We have participated in four major training sessions that have been conducted by the interest groups for the training of PHAs. To date, they have been conducted in Atlanta, Ga., Alexandria, Va., Washington, D.C., Chicago, Ill.. Additional sessions are planned and we will have a major role in them.

We have conducted two major training sessions for our Field Staff so that they will be in a position to effectively respond to the numerous technical assistance needs of PHAs. Those sessions were held during the month of May, 1990.

We are in the process of developing a detailed set of questions and answers that can be distributed to our Field staff as well as PHAs.

Establishment of an accurate system for testing - We believe that accurate testing is essential to an effective abatement program. Therefore, the guidelines themselves contain several tools which are designed to promote this. Appendix 8 - Laboratories for Paint and Dust Analysis and Blood Lead Analysis - provides a listing for currently accredited laboratories which can conduct testing. Other appendices are specifically designed to provide additional assistance in this area. However, despite this guidance, we continue to have concerns over the availability of trained testers in the field. Accordingly, we have made this a priority request of the Environmental Protection Agency. That Agency did a commendable job in preparing a training curriculum for the guidelines themselves. We have asked them to make the training of inspectors/testers the next priority.

Insurance - We have advertised for insurance coverage and to date have received a number of responses. We are using the Highpoint

Public Housing Agency to serve as the focal point in obtaining a Master Coverage Insurance Policy. Once approved, PHAs would then be able to simply pay individual premiums. We are optimistic that coverage will be available under this system very shortly. In addition, we understand that there is some movement on the part of interest groups to establish coverage in this regard.

Cost - Unfortunately, we are not able at this time to give definitive estimates of the cost of lead-based paint testing or abatement on either a project or systemwide basis. As you are aware, we are currently engaged through the Office of Policy Development and Research in a major demonstration program in this field. Three PHAs have volunteered to allow us to have our contractor do lead-based paint abatement work on their developments. This demonstration is due to be completed later this year and accurate cost projections are an end product of the study.

Q. 4. The Committee has been informed by a local Louisville community group that while serving as Director of HUD's Louisville Office, you sent a letter dated April 7, 1986 opposing a desegregation plan for public housing.

Could you please explain to the Committee the circumstances behind this action, and why you opposed these desegregation plans?

A. 4. This question can best be answered by attaching a copy of a letter I sent to Rev. Louis Coleman on June 1, 1990, after learning of Rev. Coleman's concern over this matter. At no time have I been a supporter of segregated housing. In fact, I have a record which dates back to my student days of support for the civil rights of all Americans. For example, while serving as President of the Kentucky Association of Realtors in 1985, the Realtors participated in Fair Housing month for the first time and I established an Equal Opportunity Committee for the association. I take my responsibilities in this area very seriously, both as a private citizen and as a government official.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

June 1, 1990

Rev. Louis Coleman
Shelby Congregational Methodist Church
Shelbyville, Kentucky 40065

Dear Rev. Coleman:

I was deeply saddened to read your "Position Paper" on my nomination as Assistant Secretary for Public and Indian Housing in the United States Department of Housing and Urban Development. Since we have never had the opportunity to personally discuss my position on the Kentucky Human Rights Commission's Voluntary Desegregation Agreement for Public Housing Authorities, I do not believe you have the full story. Allow me to share with you my perception of the situation.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs receiving Federal financial assistance. It is the duty -- and I might add honor -- of HUD to enforce this statute. As is the case with all my other statutory responsibilities, I take this very seriously.

In 1986 HUD learned that the Kentucky Human Rights Commission had required public housing authorities to sign a document they call their Voluntary Agreement to Desegregate Public Housing that contained language imposing boilerplate requirements on those authorities. While of noble purpose, it required them to implement tenant selection and assignment procedures which were clearly race preferential and which were interpreted by HUD and by the United States Department of Justice to be in violation of Title VI of the 1964 Civil Rights Act and Title VIII of the 1968 Civil Rights Act (the Federal Fair Housing Act).

The Supreme Court has held that any race conscious remedial actions must be narrowly tailored to correct discriminatory conduct found and drawn to assure that the remedy is least intrusive on the rights of innocent third parties (Wygant v. Jackson Board of Education, 106 S. Ct. 1842 (1986)). However, the Commission agreements called for the selection of tenants on the basis of their race, not on a first-come, first-serve basis. As a result, an applicant who was first on the list but of the "wrong race", so

to speak, was passed over and the unit available offered to all applicants of the other race(s), irrespective of their place on the list, before any applicant of the wrong race received an offer of that unit. In the many cases where projects were predominantly Black, this meant that all Black families on a waiting list would be denied an offer of units in those projects until the units had been offered to and rejected by all Whites on the list, even where the Whites applied after the Blacks. On its face the provision denied or delayed housing for applicants based upon their race and was unacceptable whether it was a remedy for a finding of past discrimination or was a voluntary affirmative measure on the part of the PHA.

In this regard, it is important to note that the agreements were not always based upon a finding of any violation of the laws of Kentucky or of the federal government; many were based upon a statistical analysis by the Commission that they called their "segregation index". Based upon these statistics the Commission imposed requirements that resulted in substantial denials or delays of housing to the very minorities that were the subject of the segregation the Commission claimed existed. The agreements did not state that they were intended to remedy a specific violation of law, to correct the effects of past discrimination, or to provide remedies for victims of past discrimination. Rather, they were premised upon the objective of achieving a specified racial balance in public housing project occupancy which would correct the segregation index.

Finally, the agreements had no specified duration and, therefore, they required a PHA to maintain a racial balance in the PHA projects. This involved the use of a fixed quota which is discriminatory and not similar to the use of goals designed to remedy manifest imbalances, as, for example, in an employer's workforce (see Johnson v. Transportation Agency, Santa Clara County, California, 107 S. Ct. 1442 (1987)).

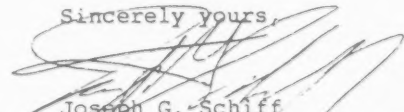
Although I understand the motivation of the Commission was to end the vestiges of mandatory segregation which formerly existed in Kentucky, its methods were found to be contrary to law. This determination was not made by me. Rather it was made in Washington and enforced by me in my role as manager of the Louisville HUD Office. I am not trying to distance myself from a decision I agree with, I am trying to explain what prompted my letter to the Housing Authority of Louisville that you have cited in your "Position Paper."

The practical effect of the Commission's policy was to deny housing assistance to deserving minority families for social engineering purposes. Strict racial quotas were to be applied. I cannot support such actions. Instead, I fully support the Department's vigorous attempts at truly voluntary desegregation activities.

For example, we have developed in cooperation with the United States Department of Justice a significant number of non-race preferential options that public housing authorities can utilize to achieve legal desegregation of their complexes, even when no previous discrimination has occurred. In addition, when we find a housing authority in violation of Title VI, we have other options we can implement. For example, in Buffalo, NY we recently entered into an agreement with the local housing authority which will have the effect of offering families significant incentives for moving into a development where their race does not predominate. This course of action will accomplish over a period of time the same results as the Commission's "Voluntary Agreement", but within the bounds of the law and without denying housing to innocent parties.

President Bush, Secretary Kemp, and I all agree that fair housing is a critical matter for all Americans. In fact, as I explained at the Urban League Housing meeting last Thursday, "fair housing for all Americans" is one of HUD's six priorities for the Bush Administration. Those of us in positions of responsibility must be vigilant in our determination to enforce the fair housing laws, and I will continue to exercise this important obligation to all Americans.

Sincerely yours,



Joseph G. Schiff
Special Advisor to the Secretary
for Public and Indian Housing

**Public Housing Authorities Directors Association**

THE PHADA BUILDING
511 Capitol Court, NE
Washington, DC 20002-4937
Telephone (202) 546-5445 FAX (202) 546-2280

June 7, 1990

Senator Donald W. Riegle, Jr.
SD-105 Dirksen Senate Office Bldg.
Washington, DC 20510-2201

Dear Senator Riegle:

The Public Housing Authorities Directors Association (PHADA) enthusiastically supports the confirmation of Mr. Joseph Schiff as Assistant Secretary for Public and Indian Housing at the Department of Housing and Urban Development.

While Area Manager of the Louisville office of HUD, Mr. Schiff gained the respect of an overwhelming number of PHA Executive Directors. His honesty and fairness with PHAs was one of the major reasons he enjoyed such high regard.

During his tenure as Assistant Secretary Designee he has been available to meet with PHAs on a regular basis.

We firmly believe he is the type individual needed at HUD as a member of the Kemp team.

Sincerely,

James W. Johnson
Executive Director



City of Louisville

OFFICE OF THE MAYOR

JERRY E. ABRAMSON
MAYOR601 W. Jefferson Street • Louisville, KY 40202-2728
(502) 625-3061

May 21, 1990

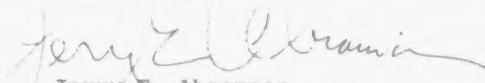
The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing to express my wholehearted support for the nomination of Joseph Schiff as Assistant Secretary of Public and Indian Housing for the Department of Housing and Urban Development. Joe is an accomplished and dedicated public servant who has been an outstanding leader in the field of housing and community development in Louisville.

As HUD's director in Louisville, Joe was instrumental in supporting innovative housing programs for Louisville and Jefferson County that have now become national models for housing authorities across the country. He will make an intelligent and sensitive contribution to solving this nation's housing problem, and I urge the Senate to confirm him as soon as possible.

Sincerely,



Jerry E. Abramson
Mayor



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410

MAY 17 1990

Honorable Donald W. Riegle
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Mr. Chairman: *Don*

Thank you for the opportunity to meet with you regarding the nomination of Joseph G. Schiff to be Assistant Secretary for Public and Indian Housing.

I understand that you are concerned about certain conclusions drawn by the Office of Special Counsel (OSC) on its examination of the activities of Mr. Schiff while he was employed by Jefferson County, Kentucky. The OSC believes that Mr. Schiff may have violated the Hatch Act almost ten years ago as a local government official. OSC Associate General Counsel William Reukauf, in the enclosed March 2, 1990 letter, reads the Hatch Act very broadly to cover any state or local government employee whose duties in any way relate to a program receiving Federal funds.

The Hatch Act covers only certain state or local government employees "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States." 5 U.S.C. 1501(4). Mr. Schiff's functions as Deputy County Judge/Executive of Jefferson County, Kentucky, included a broad range of duties, less than 5-10 percent of which involved Federally-financed activities. Mr. Schiff was the top assistant to the Jefferson County Executive in operating the county government. On occasion, he acted in matters that affected Federally-financed activities in the county but, due to the infrequency of his involvement, his "principal employment" obviously was not in connection with those activities.

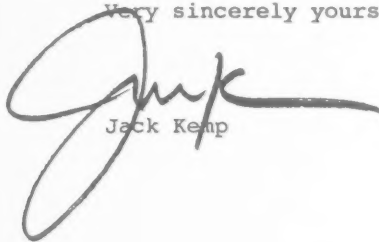
The Office of Legal Counsel (OLC) of the Department of Justice has reviewed the OSC letter and concluded OSC applied the wrong legal standard. To read the Hatch Act coverage so broadly would mean that every state and local employee would be covered by the Hatch Act if any portion of the state or locality received any Federal funds. The purpose of section 1501(4) was to cover state and local employees whose functions were so closely connected to the Federal activity that they could be viewed as

equivalent to Federal employees. OLC has determined that an employee is covered only if the duties connected with the Federally-funded activity constitute his principal employment compared with his other local government duties. The OLC also concluded that the OSC letter did not contain sufficient facts about Mr. Schiff's duties as a local employee for OLC to find that he was covered by the Hatch Act under this test. A May 4, 1990 summary by the OLC of its opinion is enclosed.

Mr. Schiff has had a distinguished career with the Department of Housing and Urban Development and, as Manager of HUD's Louisville Office since these incidents, he operated one of the Department's most well-managed offices. I continue to give my full support to his nomination to be Assistant Secretary and believe that Mr. Schiff will make a significant contribution to achieving one of my priority objectives of empowering the poor by creating resident management of public housing. I am anxious to have Mr. Schiff assume his position as Assistant Secretary as soon as possible and hope that the confirmation process can be expedited to accomplish this.

A similar response is being sent to Senator Jack Garn.

Very sincerely yours,

A handwritten signature in dark ink, appearing to read 'Jack Kemp', with a large, stylized initial 'J' and a long, sweeping horizontal stroke extending to the right.

Jack Kemp

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL
1120 Vermont Avenue, N.W., Suite 1100
Washington, D.C. 20005

March 2, 1990

Joseph G. Schiff, Esq.
1708 Clayton Road
Louisville, Kentucky 40205

Re: OSC File No. HA-89-1304

Dear Mr. Schiff:

On September 27, 1989, the Office of Special Counsel (OSC) received a referral from the United States Department of Justice concerning allegations that you violated the Hatch Act. More specifically, it was alleged that while you were employed as the Deputy County Judge/Executive of Jefferson County, Kentucky, you coerced, attempted to coerce, commanded, or advised State employees to contribute funds to partisan political campaigns. Such conduct violates 5 U.S.C. § 1502(a)(2) when committed by a "State or local officer or employee." Pursuant to 5 U.S.C. § 1216(a)(2)¹, we undertook an investigation to determine whether you were covered by the Hatch Act while serving as the Deputy County Judge/Executive of Jefferson County, and, if so, whether you had engaged in the conduct alleged. Since the original information which we received contained allegations of Hatch Act violations going back 8-10 years, we were particularly interested in determining whether such violations continued into more recent times.

¹Section 1216(a)(2), formerly 5 U.S.C. § 1206(e)(1)(B), provides that:

In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning -- political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees.

Under 5 U.S.C. § 1212(f), formerly 5 U.S.C. § 1206(1), the Special Counsel is authorized to issue advisory opinions regarding matters arising under 5 U.S.C. § 1501 et seq. This warning letter is issued pursuant to that authority.

Section 1501(4) of 5 U.S.C. defines a "State or local officer or employee" as:

an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.

Given the foregoing definition, we conclude that you were covered by the Hatch Act during your employment as the Deputy County Judge/-Executive of Jefferson County, Kentucky. In your words, "Jefferson County is the largest county in Kentucky. The County Judge/Executive is the chief executive officer or 'mayor' of the unincorporated area of the county and provides urban services to these people." As Deputy to then Judge Mitch McConnell, you were his top assistant. You have stated that in his absence, you were statutorily in charge of county government. Further, in your interview with OSC on November 6, 1989, you testified that you served Judge McConnell primarily as a staff adviser on a broad range of subjects which included the county budget, and, within that budget, federally funded programs. You acknowledged that Jefferson County received federal Community Development Block Grants. Your SF-171, dated April 17, 1985, states:

While in the Office of the County/Judge Executive I participated in deciding which proposed Urban Development Action Grant (UDAG) projects were most meritorious for local objectives and thus deserved the most aggressive local governmental support.

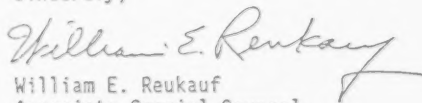
Your SF-171 further stated that you spent, on average, 30 hours per week carrying out your duties as Deputy County Judge/Executive. We therefore conclude that in your capacity as Deputy County Judge/Executive of Jefferson County, you were principally employed in connection with federally funded activities, and thus, were subject to the Hatch Act's prohibition against coercing political contributions.

The investigation uncovered substantial evidence that you coerced, commanded, or advised numerous Jefferson County employees to make political contributions. The evidence showed that several of these employees were protected from such actions by the Hatch Act. Several present and former Jefferson County employees, some of whom regard you highly, told OSC investigators that you solicited them for political contributions. Indeed, according to some of these witnesses, you indicated the expectation that their contributions should approximate two percent of their salaries. One of the items in our investigative file is a set of 43 index cards containing the names, dates, and amounts of contribution by members of the staff of the County Judge/-Executive. Not only were these cards maintained by a staff employee in order to keep a record of employees' contributions, but the information contained in these cards was supplied, in large part, by you.

For many years now, the Hatch Act's prohibition against coercing political contributions has been construed in accordance with what seems self-evident: "[I]t is inherently coercive for a supervisor to ask an employee to contribute to a political cause, absent exculpatory circumstances." Special Counsel v. Purnell, 37 MSPR 184, 195 (1988). See also, In re Jarvis, 2 PAR 711 (1964). One witness told OSC, more colloquially, that "one would have to be pretty stupid not to get the message that Schiff was giving him and that was that this 2% payment was, in fact, a condition of employment." Thus, your solicitation of this and other employees was inherently coercive.

We interviewed dozens of witnesses in search of evidence that Hatch Act violations continued after 1981. We found no such evidence. In view of this, and the fact that you are not now employed by the State, we are declining prosecution of this matter. Nevertheless, this letter serves as notice that we believe the evidence would warrant a finding that your partisan political activities violated the Hatch Act, and that any future violations of the Act may subject you to prosecution.

Sincerely,



William E. Reukauf
Associate Special Counsel
for Prosecution

cc: William Warner, Esq.
621 West Main Street
Louisville, Kentucky 40202

WER/djc



U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

May 4, 1990

Summary of Office of Legal Counsel Opinion Regarding
Scope of Hatch Act Coverage of State and Local Officials

The Office of Legal Counsel prepared a memorandum for the White House Counsel's Office evaluating the conclusions of the United States Office of Special Counsel (OSC) set forth in a March 2, 1990 letter to Joseph G. Schiff. In its letter, OSC concluded that Mr. Schiff was covered by the Hatch Act while employed as the Deputy County Judge/Executive of Jefferson County, Kentucky. [We determined that OSC applied an incorrect rule of law in finding that Mr. Schiff was covered by the Hatch Act. Moreover, we concluded that the facts set forth in the OSC letter failed to demonstrate that Mr. Schiff was covered by the Act under the appropriate legal standard.] We were not asked to determine whether Mr. Schiff was in fact covered by the Hatch Act, an issue that could only be resolved by reference to facts that were not available to us.

Certain provisions of the Hatch Act apply to any "State or local officer or employee," see 5 U.S.C. § 1502(a), which is defined to mean "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include -- (A) an individual who exercises no function in connection with that activity. . . ." 5 U.S.C. § 1501(4). The term "principal employment" requires weighing two or more of an individual's "employments" to determine which is principal. However, "employment" could either refer to the different functions of a particular position, in which case one must weigh functions performed for the State in connection with a federally funded activity against functions that are unrelated to the federally funded activity, or it could mean a discrete "occupation" or "position," in which case the statute would seem to require a comparison between the particular public position held by an individual and other (public or private) positions he may hold.

The Civil Service Commission (CSC), the agency first given jurisdiction to enforce the Hatch Act, originally adopted the former analysis in a contemporaneous construction of the statute. Subsequently, however, the CSC reversed itself and adopted the latter construction, under which determination of an individual's "principal employment" is required only where the individual has two or more discrete jobs; where the state employee holds no other position, the CSC decided he would be covered if, as a natural and foreseeable incident of his state position, he performs any duties in connection with a federally funded program. Matter of Slaymaker, 2 P.A.R. 56, 58 (1943). The CSC's second interpretation of the statute has been followed by the Merit Systems Protection Board, which now has jurisdiction over the Hatch Act, Special Counsel v. Gallagher, No. HQ12068810012, slip op. at 4-5 (M.S.P.B. Mar. 2, 1990), and was almost certainly applied by OSC in determining that Mr. Schiff was covered by the Act.

We believe the correct construction of the statute is that originally adopted by the CSC. Congress intended the Hatch Act to cover a state or local employee only if his primary or principal responsibilities for the state relate to a federally funded activity. The test applied by OSC is virtually identical to a standard specifically rejected by Congress when it adopted the "principal employment" language. The rejected language would have applied Hatch Act restrictions to a state employee "who exercises any function" in connection with a federally funded activity. See H.R. Rep. No. 2376, 76th Cong., 3d Sess. 7-8 (1940). OSC's test is inconsistent with Senator Hatch's view that the bill would only apply to state employees so connected with a federally funded activity as to be functionally equivalent to federal employees, see 86 Cong. Rec. 2338 (1940), and with the widespread assumption in Congress that primarily state employees paid from federal funds would be covered, see, e.g., id. at 2341-42, 2437-38, 9363, 9365, 9367, 9431. OSC's standard is also inconsistent with the explanations of the "principal employment" test offered in congressional debate. See id. at 9372, 9432.

Not only did OSC apply an incorrect legal standard in concluding that Mr. Schiff was covered by the Hatch Act, but OSC also failed to recite facts sufficient to show that Mr. Schiff was covered under the correct standard. OSC did not identify what specific county activities were funded by the federal government; it did not identify Mr. Schiff's specific duties performed in connection with those programs; and it nowhere attempted to demonstrate that Mr. Schiff's duties in connection with such activities constituted his principal employment for the

county. The only specific statement of Mr. Schiff's duties offered by OSC leads to precisely the opposite conclusion -- that Mr. Schiff's principal employment constituted advising the County Judge on matters unrelated to any county activity funded in whole or in part by the federal government.

J. Michael Luttig
J. Michael Luttig
Principal Deputy

Assistant Attorney General
Office of Legal Counsel

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